



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
MONTANA STATE OFFICE
222 NORTH 32ND STREET
P.O. BOX 36800
BILLINGS, MONTANA 59107-6800



IN REPLY TO:

SDR-922-91-08
3165.3 (922.L)

May 29, 1991

CERTIFIED-RETURN RECEIPT REQUESTED

DECISION

Mr. Jerry Croft)
Croft Petroleum Company)
Petroleum Center Building) SDR No 922-91-08
214 North Central Avenue)
Cut Bank, Montana 59427)

REMANDED

Croft Petroleum Company (Croft) requested a State Director Review (SDR) of a drainage decision issued by the Lewistown District Office (LDO) on March 29, 1991 (Enclosure 1). The request was timely received on April 11, 1991 (Enclosure 2). The LDO decision required Croft to pay compensatory royalty on gas drained by Muntzing No. 3 well from Blackfeet Tribal oil and gas lease No. 14-20-251-4313.

Croft also requested that they be allowed to present their arguments orally concerning the assessment. On May 22, 1991, Croft was contacted by this office concerning this review and preliminary findings. At that time, Croft decided an oral presentation was not necessary. The following is the chronology of events which have taken place on the Tribal lease.

On September 20, 1990 (Enclosure 3), the LDO assessed Croft for failure to expand communitization agreement (CA) No. NCR 372 to protect the Tribal lease. Croft contested LDO's decision and submitted an SDR request to the State Director on September 27, 1990. On February 13, 1991 (Enclosure 4), this office remanded the case to the LDO. This office ruled that Croft is not required to amend the existing CA to include the Tribal land. However, if the LDO can prove that a paying protective well could have been drilled, the LDO can re-assess Croft for the amount of compensatory royalties due.

On February 20, 1991 (Enclosure 5), the LDO issued Croft a demand letter which outlined the options to protect the Tribal lease from drainage. Croft may also provide geologic/economic justification to prove that drainage is not occurring or a paying well could not have been drilled.

On February 27, 1991 (Enclosure 6), the law offices of Anderson, Beatty & Buyske, writing on behalf of Croft, offered three possibilities to resolve the drainage case. On March 6, 1991, Nick Douglas, LDO, Petroleum Engineer contacted Mr. Jerry Croft to discuss the February 27, 1991, letter. No solution was reached in resolving the drainage case.

On March 14, 1991 (Enclosure 7), Croft responded to the LDO by providing an economic analysis along with geologic data.

On March 29, 1991 (Enclosure 1), the LDO issued a decision re-assessing Croft compensatory royalty on the Tribal lease effective May 1, 1980. The LDO dismissed Croft's arguments on the March 14, 1991, letter and concluded that a paying protective well could have been drilled.

The economic analysis conducted by the LDO has demonstrated that drilling a protective well in 1981, and beyond, would have been economical for a prudent operator. Enclosure 8, which is also referenced as Exhibit E, is the economic analysis conducted by the LDO.

The LDO has stated that compensatory royalty will begin May 1, 1980, 5 months from the date of first production from the offending well. The LDO deemed 5 months to be an appropriate timeframe for a prudent operator to drill and complete a 2,670-foot well. Based on the history of this case, the effective date determined by the LDO for commencement of compensatory royalties is not reasonable because Croft was diligent in his efforts to communitize the lands during this period. Also, the offending well was not put on production until December 1980, when it produced 298 MCF for the month. Therefore, drainage could not have been occurring until such time.

As we stated in the February 13, 1991, SDR decision letter, "...Croft made numerous attempts to work with the Blackfeet Tribal Business Council (BTBC) and the Superintendent, BIA, Blackfeet Agency to communitize the Tribal lease under secs. 2 and 11. No response was ever received by Croft from the BTBC on this issue. However, there is no record indicating that the Tribe rejected Croft's offer. On December 21, 1981, the USGS approved the CA submitted by Blackfeet Petroleum and Croft. The CA excluded the Tribal lands in sec. 2. According to the records, it appears Croft has diligently pursued the approval from the BTBC for committing the Tribal lands in secs. 2 and 11 to the CAs. All attempts were unsuccessful. Therefore, Croft is not required to amend the existing CAs to include the Tribal lands as required by the LDO decision letter dated September 20, 1990."

Croft had fulfilled their obligation until they received a notification from the Bureau of Land Management (BLM) dated July 28, 1988, requiring the land be protected from drainage through amendment of the existing CA. We agree with the LDO that 5 months is sufficient time for a prudent operator to drill and complete the protective well. Since Croft was first contacted by the LDO on July 28, 1988, to protect the lease from drainage, we have concluded that the assessment of compensatory royalty should begin no sooner than January 1, 1989, and end the date that protection is provided, the date that the Muntzing No. 3 well ceases to produce, or the date the lessee relinquishes the lease. The January 1, 1989, date was discussed with Croft on May 22, 1991, in a telephone conversation between Chun Wong, Pascual Laborda, Bill Croft and Jerry Croft. Croft agreed that the January 1, 1989, date was reasonable. We

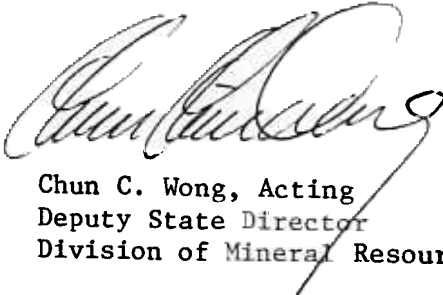
have also conducted an economic analysis to verify the LDO contention that an economic well could have been drilled in 1981, and beyond. Enclosure 9 is the economic analysis conducted which demonstrates that an economic well could have been drilled and completed January 1, 1989.

It was also determined that the LDO did not follow Bureau drainage procedures prior to issuing the March 29, 1991, decision letter. The BLM Manual, 3160-2 - Drainage Protection, Release 3-263, dated December 17, 1990, Coordination and Documentation Manual section .19, states:

"...In Indian cases, the BIA's concurrence is documented prior to sending a decision letter to the lessee(s) and affected parties."

Because this procedural requirement has not been fulfilled or documented anywhere in the record prior to issuing the March 29, 1991, decision letter, we hereby remand the case to the LDO.

The LDO must secure concurrence from the BIA prior to re-issuing a decision letter to Croft.



Chun C. Wong, Acting
Deputy State Director
Division of Mineral Resources

9 Enclosures

- 1-Croft letter dated April 4, 1991 (3 pp)
- 2-LDO letter dated March 29, 1991 (3 pp)
- 3-1st LDO Decision letter dated September 20, 1990 (2 pp)
- 4-SDR Decision letter dated February 13, 1991 (5 pp)
- 5-LDO Demand letter dated February 20, 1991 (2 pp)
- 6-Attorney's letter dated February 27, 1991 (4 pp)
- 7-Croft letter dated March 14, 1991 (7 pp)
- 8-LDO Economic Analyses (18 pp)
- 9-1989 Economic Analysis (2 pp)

cc: (w/ encls.)
DM, Lewistown